



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY Blue Ridge Regional Office

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO BOONE HOMES, INC. OF ROANOKE FOR THE RIDGE AT FAIRWAY FOREST

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d) by the Board to Boone Homes, Inc. of Roanoke, for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
7. "Regulation" means the Virginia Water Protection Permit Program Regulation, 9 VAC 25-210-10 *et seq.*

JAB

8. “VWP Permit or Permit” means an individual or general permit issued by the board under §62.1-44.15:20 of the Code of Virginia that authorizes activities otherwise unlawful under §62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's §401 certification.
9. “Site” means the subdivision project owned and developed by Boone Homes, Inc. of Roanoke and named the Ridge at Fairway Forest, located in Roanoke County, Virginia.
10. “Boone” means Boone Homes, Inc. of Roanoke, a Virginia corporation. Boone is assigned Federal Identification Number 54-1134069.

SECTION C: Findings of Fact and Conclusions of Law

1. The Ridge at Fairway Forest, a subdivision project owned and developed by Boone, received coverage under Virginia Water Protection Permit WP4-06-2594 on April 18, 2007. The subdivision is located off of Franklin Street in Roanoke County.
2. Boone had two unauthorized sediment discharges, pollutants pursuant to 9 VAC 25-210-10, into an unnamed tributary of the Roanoke River (“Roanoke River UT”) in August 2007 and December 2007. The August 2007 discharge, arising out of breaches in the silt fences by Boone subcontractors Joe Bandy & Son, Inc. and E.C. Pace & Co., impacted 75 linear feet of stream and the December 2007 discharge, arising out of Boone subcontractor E.C. Pace & Co.’s use of explosives in removing rock from the property, impacted 68 linear feet. As a result of these unauthorized discharges, Boone received two informal compliance letters from the Department.
3. Boone had a third unauthorized sediment discharge, arising out of Boone subcontractor Joe Bandy & Son, Inc.’s breach of a silt fence, and consequently received Warning Letter WL-08-02-WCRO-008 from the Department on February 26th, 2008. This discharge impacted 28 linear feet of stream.
4. On April 7, 2008 Department staff conducted a compliance inspection at the request of Boone at the Ridge at Fairway Forest subdivision. Present at the inspection were representatives from the Department, Boone; Joe Bandy & Son, Inc.; Environmental Services & Consulting, LLC; and two other grading contractors.
5. The compliance inspection was triggered by a fourth unauthorized sediment discharge into the Roanoke River UT on April 3, 2008. This discharge, arising out of Boone sub contractor Joe Bandy & Son, Inc.’s omission in implementing the grading plan, impacted approximately 390 linear feet. The unauthorized sediment discharge was approximately 1-6” in depth, and filled between 20-80% of the stream channel at any one spot.
6. Based on conversations Department staff had with Boone and its contractors and observations made by Department staff during the April 7, 2008 compliance inspection and a subsequent inspection on April 11, 2008, it is apparent that the April 3, 2008 unauthorized sediment discharge into the Roanoke River UT occurred because Boone’s contractor made a

JAB

Consent Special Order

Boone Homes, Inc. of Roanoke – The Ridge at Fairway Forest

Page 3 of 7

mistake in implementing the grading plan, which resulted in a failure to follow the Roanoke County approved erosion & sediment control plan. Boone was proactive in reporting this discharge and cleaning up afterwards.

7. As a result of the unauthorized sediment discharge on April 3, 2008, the Department issued Notice of Violation No. NOV-08-04-WCRO-002 to Boone.
8. On April 16-18, April 29, May 2nd, and May 9th, 2008 Department staff conducted inspections of the clean-up process of the Roanoke River UT at Ridge at Fairway Forest subdivision
9. On April 29, 2008, Boone had a fifth unauthorized sediment discharge into the Roanoke River UT, arising out of the same omission by Boone subcontractor Joe Bandy & Son, Inc. set forth in Section C, 4, above. This discharge was observed by Department staff on April 29, 2008. This discharge impacted approximately 400 linear feet, with a depth of approximately 1-10" and 0-75% of the channel filled throughout the impacted reach. Boone was proactive in reporting this discharge and cleaning up afterwards.
10. Boone's clean-up effort of the April 3, 2008 and April 29, 2008 unauthorized sediment discharges employed a variety of remedial techniques to minimize additional discharges into the Roanoke River UT during the clean-up. These techniques included a coffer dam, hay bales, pumping into a stormwater basin, a dirt bag, filter fabric, and sediment removal by hand into sandbags that were moved away from stream.
11. Department staff observed during an inspection on May 9, 2008, that the clean-up process was completed and the Roanoke River UT had been returned to an acceptable condition.
12. On September 4, 2008, the Department staff conducted an inspection of the Ridge at Fairway Forest subdivision at the request of Boone's agent. The request was made as a result of an unanticipated discharge of fill material from the construction site to waters of the state that occurred on August 29, 2008. The discharge flowed through and over several levels of silt fence and into a perennial stream. Soils, clay and gravel were deposited between 2 and 7 inches deep in the stream downstream from the discharge point and similarly deposited into an additional perennial stream. A total of approximately 1560 linear feet of stream was impacted. Boone was proactive in reporting this discharge and cleaning up afterwards.
13. As a result of the sixth unauthorized sediment discharge on August 29, 2008, the Department issued Notice of Violation No. NOV-08-09-WCRO-002 to Boone.
14. Code § 62.1-44.5.A and 9 VAC 25-210-50 state that: "Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other

JAN

Consent Special Order

Boone Homes, Inc. of Roanoke – The Ridge at Fairway Forest

Page 4 of 7

uses; or 4. On and after October 1, 2001, conduct the following activities in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or function”.

15. Boone’s six unauthorized sediment discharges were not in compliance with Boone’s VWP Permit and a violation of Code § 62.1-44.5.A and 9 VAC 25-210-50.

SECTION D: Agreement and Order

1. Accordingly, by virtue of the authority granted it pursuant to Va. Code §62.1-44.15(8a) and (8d), the Board orders BOONE and BOONE voluntarily agrees, to pay a civil charge of Twenty-Seven Thousand Three Hundred Dollars (\$27,300) within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to “Treasurer of Virginia” and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, VA 23218

The payment shall include BOONE’s Federal Identification Number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

2. BOONE shall not allow any unauthorized discharge of sewage, industrial wastes, other wastes, or any noxious or deleterious substances into state waters (VWP General Permit WP4-06-2594, Part III, Conditions Applicable to All VWP General Permits- Q).
3. BOONE shall not otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses (VWP General Permit WP4-06-2594, Part III, Conditions Applicable to All VWP General Permits- Q).
4. BOONE shall comply with all conditions of its VWP General Permit, WP4-06-2594.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of BOONE, for good cause shown by BOONE, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (a) taking any action authorized by law regarding any

JAB

Consent Special Order

Boone Homes, Inc. of Roanoke – The Ridge at Fairway Forest

Page 5 of 7

additional, subsequent, or subsequently discovered violations; (b) seeking subsequent remediation of the Site as may be authorized by law; or (c) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, BOONE admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. BOONE consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. BOONE declares that it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.* and the State Water Control Law, Va. Code § 62.1-44.2 *et seq.* and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and agrees to waive any objection to, or appeal from, the entry of this Order. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or judicial review of, any action taken by the Board to enforce this Order.
6. Failure by BOONE to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. BOONE shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. BOONE shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BOONE shall notify the BRRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth: (a) the reasons for the delay or noncompliance; (b) the projected duration of any such delay or noncompliance; (c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and (d) the timetable by which such measures will be implemented and the date full compliance will be achieved. Failure to so notify the BRRO Regional Director within twenty-four hours of learning of any condition above, which BOONE intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and



Consent Special Order

Boone Homes, Inc. of Roanoke – The Ridge at Fairway Forest

Page 6 of 7

BOONE. Notwithstanding the foregoing, BOONE agrees to be bound by any compliance dates of this Order that precedes the effective date of this Order.

11. Any plans, reports, schedules or specifications attached hereto or submitted by BOONE and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
12. This Order shall continue in effect until: a) BOONE petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of this Order, b) the Director or Board terminates the Order in his or its sole discretion upon 30 days notice to BOONE, whichever occurs earlier. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BOONE from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. The undersigned representative of BOONE certifies that he or she is authorized to enter into the terms and conditions of this Order and to execute and legally bind BOONE to this document. Any documents to be submitted pursuant to this Order shall also be submitted by BOONE or an individual authorized by BOONE.

JAB

Consent Special Order

Boone Homes, Inc. of Roanoke – The Ridge at Fairway Forest

Page 7 of 7

14. By the signature of the authorized official below, BOONE voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29th day of APRIL, 2009.

Steven A. Dietrich
Steven A. Dietrich, Regional Director
Blue Ridge Regional Office
Department of Environmental Quality

Boone Homes, Inc. of Roanoke voluntarily agrees to the issuance of this Order.

Mr. J. Alexander Boone, President
Mr. J. Alexander Boone, President

Commonwealth of Virginia

~~City~~/County of Roanoke

The foregoing document was signed and acknowledged before me this 27th day of

JANUARY, 2009, by Mr. J. Alexander Boone, President, on behalf of Boone Homes, Inc. of Roanoke.

Glennie S. Dellon
Notary Public

My commission expires: September 30, 2011

Registration # 138008

